

## Internal Revenue Service

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B07  
PLR-134102-06

Date:  
July 19, 2007

### Legend

Decedent =  
Spouse =  
Trust =  
Date 1 =  
Date 2 =  
Date 3 =

Dear

This is in response to your authorized representative's letter, dated July 5, 2006, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under Internal Revenue Code § 2056(b)(7).

Decedent and Spouse created Trust on Date 1 and executed the First Amendment/Restatement to Trust on Date 2. Decedent died testate on Date 3, survived by Spouse. Decedent's will bequeaths the residue of Decedent's estate to Trust. Article V, paragraph 5.02.2 of the Trust agreement provides that upon the death of either trustor, the trustee shall divide the trust estate, including any additions made by the will of the deceased, into separate shares. Trust A includes the surviving trustor's share of the community property and the surviving trustor's separate property. Trust B shall be equal to the maximum amount which can be passed after allowing for the unified credit against the federal estate tax. Trust C consists of all the Trust assets not placed in Trust A or B and is referred to in the Trust agreement as the QTIP trust. Paragraph 5.02.2(c)(4) grants the trustee the power to determine whether or not to make a QTIP election with respect to Trust C. Paragraph 5.05.1(a) provides that the entire net income of Trust C shall be paid to Spouse at least annually. At Spouse's

death, the principal of Trust C shall be distributed as Spouse directs to the issue of the marriage between Decedent and Spouse.

A United States Estate (and Generation-Skipping Transfer) Tax Return ("Form 706") was prepared by a certified public accountant and filed on behalf of Decedent's estate. The accountant failed to list Trust C on Schedule M of the Form 706. Spouse, as executor of Decedent's estate, was not consulted regarding the option of claiming a QTIP election with respect to Trust C.

You have requested an extension of time under § 301.9100-1 to make a QTIP election under § 2056(b)(7) for the Trust.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a), and no part of the property shall be treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" as property: (1) that passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if (1) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property is made by the executor on the return of tax imposed by § 2001. Such an election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of this paragraph, the term “return of tax imposed by § 2001” means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the

aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, the standards of § 301.9100-1 and § 301.9100-3 have been met because the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, we grant an extension of time for making the QTIP election under § 2056(b)(7) for Trust C. The election must be made within 60 days of the date of this letter. The election should be made on a supplemental Form 706 filed with the Cincinnati Service Center. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representatives.

Sincerely,

William P. O'Shea

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)